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COMMONWEALTH EDISON COMPANY'S
REPLY BRIEF ON EXCEPTIONS

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**COMMONWEALTH EDISON COMPANY'S
REPLY BRIEF ON EXCEPTIONS**

Commonwealth Edison Company (“ComEd”) submits this Reply Brief on Exceptions (“RBOE”) in response to Staff and Intervenor Briefs on Exceptions (“BOEs”) to the Administrative Law Judge’s Proposed First Notice Order (“Proposed Order”) issued on June 6, 2012.

ComEd yet again must compliment Staff on guiding a lengthy and thorough stakeholder process and ultimately proposing a rule that all stakeholders largely believe will improve the interactions between utilities and their customers. Staff at all times has conducted itself in an even-handed manner and continually sought a reasonable outcome for all parties and, most importantly, utility customers. Consequently, it is little surprise that the ALJ – after reviewing a lengthy record on each subpart of the rule – issued a Proposed Order that for the most part adopts Staff’s draft rule with only a few modifications for clarity and consistency.¹

In this brief, ComEd addresses the BOEs of Staff and certain representatives of consumer interests. As discussed below, ComEd in certain instances does not agree with some of the positions taken by parties in their BOEs. Indeed, in most of those instances their BOEs fail to point to any error in law or logic in the Proposed Order, instead they merely repeat arguments that the record shows to be unsupportable and the ALJ understands to be unreasonable and/or meritless.

¹ It is for these reasons – clarity and consistent administration of rules – that ComEd maintains the limited exception in 280.110 that it took in its Brief on Exceptions filed on June 29, 2012.

Section 280.130 Generally – Field Visit/Door Knock in Connection with a Disconnection for Non-Payment

The door knock issue is a prime example of parties simply restating arguments that were rejected by Staff and could not be supported in the Proposed Order. AARP and the AG filed a joint brief on exceptions on the door knock issue that was supported in separate briefs by the City of Chicago and LIRC. Notably, CUB did not join or independently support AARP and the AG in their brief and did not otherwise take exception to the Proposed Order on the issue of door knock. For the reasons set forth in the record and reiterated below, ComEd does not agree with the door knock exceptions proffered by the above-mentioned parties.

In addition to restating stale arguments that landed a deaf ear with Staff and the ALJ, AARP/AG's brief and the City of Chicago's brief rely substantially on the language in the Commission's recent Order on ComEd's AMI Plan, Docket No. 12-0298. Both briefs cite and unnecessarily emphasize the Commission's Order stating:

Consistent with the Commission's determination in ComEd's AMI Pilot Program, Docket No. 09-0263, and most recently Docket No. 12-0089, the Commission agrees with AG/AARP that remote disconnection should occur in a manner that is compliant with current rules. The Commission wishes to make clear that in cases of disconnection for nonpayment regardless of the technical capabilities of a meter, the on-site contact and premises visit shall be retained, given the existing language of Section 280.130(d). The Commission continues to believe that Section 280.130(d) is an important consumer protection that can prevent dangerous health and safety conditions due to the loss of essential electricity service.[Docket No. 12-0298, pp 62.]

Indeed, no party in the Part 280 Docket disagrees that Part 280 as a whole and 280.130 specifically provide valuable consumer protections. That is why Staff and other stakeholders have used *this docket* to fully vet issues surrounding the utility-customer relationship and to develop proposed rules that further ensure customers are treated in a fair and consistent

manner. In fact, the Commission's Order in Docket No. 12-0298 accurately recognizes that disconnect provisions are currently being addressed in the Part 280 docket. The Commission states, "[t]he Commission observes that there is currently pending a Part 280 rulemaking which is addressing, among other issues, the disconnection provisions of the applicable administrative code." [Docket No. 12-0298, pp 61] The Commission further states, "[o]verall, the Commission is confident that the Part 280 rulemaking will conduct the appropriate and lawful review of all the issues and arguments related to this important provision." [Id.]

As the Commission expected, in this docket a thorough review has been conducted of Part 280 and a full record has been developed on the door knock issue. For example, Staff's direct testimony summarized its position as to why there should be no door knock requirement associated with non-voluntary service disconnections:

The current rule requires that the utility representatives disconnecting service first knock on the customer's door. This requirement was likely useful to both customer and utility at a time when most customers had someone at home during the day, and when utility representatives could collect payment from the customer to prevent disconnection. Today, few if any utilities allow field representatives to accept payments from customers. A requirement to knock at the door to personally inform the customer that the service is being disconnected may be perceived as tantamount to taunting the customer and create a potential risk for the safety of the utility representative. As a result, utilities have a choice to either protect their field staff from potential safety concerns or comply with the rule. Further, developing technology may allow utilities to remotely disconnect and restore service without a need to make an actual visit to the premises, making this requirement impractical. With the strengthening of other parts of the Section on disconnection, such as the advance warning a customer gets before the day of disconnection, we believe that it is appropriate to remove the outdated "knock at the door" requirement for disconnects. [Staff Ex 1.0, 17:379-18:394]

While ComEd does not agree that the current rule requires either a door knock or a premises visit (which issue is *not* before the Commission in this docket), ComEd completely agrees

with the Proposed Order and Staff that the rewritten rules should contain no such requirement for the reasons Staff indicates. *Inter alia*, Staff accurately points out that substantial safety risks would arise for utility employees from a door knock rule. Although AARP, AG and the City of Chicago allege some health and safety benefit of a door knock, they all but ignore the record evidence showing that there is little to no benefit of a door knock – “it’s usually the situation where **the employee is in a very contentious situation where . . . their health or their safety is the one that’s at risk**, where there are dogs that are let out on them or . . . sometimes guns are pulled on them” [Tr. 488:20 – 489:1 (emphasis added)]

ComEd cannot help but notice that what the proponents of door knock would really like is a visit by a social worker when utility service is about to be disconnected – someone who would be qualified to determine whether any occupants of the premises would be put in any unusual jeopardy by the service disconnection. However commendable that impulse may be, ComEd submits that is beyond the scope of this proceeding and may be beyond the Commission’s authority to effect. Certainly utility employees typically assigned to effect a disconnection of service lack those skills.

Accordingly, the door knock exceptions proposed by AARP, AG, City of Chicago and LIRC should be rejected.

LIRC also takes exception to the Proposed Order with regard to Sections 280.130(j) and 280.130(l).² LIRC requests that utilities be required to make an additional warning call prior to disconnection and that they be prohibited from disconnecting service outside of business hours, respectively. Staff’s language in these sections, which was accepted by the

² LIRC recommends the Commission adopt GCI’s proposed language for this subsection. However, although GCI briefed this issue prior to the Proposed Order, its brief on exceptions did not discuss or provide alternative language on this subsection.

ALJ, is reasonable and provides enhanced customer protections. LIRC's exceptions should be rejected.

Section 280.10 Exemptions

ComEd supports the language originally proposed by Staff and adopted in the Proposed Order. GCI would require annual waiver proceedings, a position that the Proposed Order considered and correctly rejected.

Section 280.15 Compliance

The Proposed Order strikes a reasonable balance between implementing the revised provisions of Part 280 that result from this proceeding as soon as possible while recognizing the significant challenges to implementation of many of these changes, including changes to IT systems and business processes. Staff takes exception to the provision of the rule that would require implementation of each requirement as quickly as reasonably practicable but in no event late than 24 months from the effective date of the new rules. Staff suggests shortening the maximum time allowed to 12 months. [Staff BOE at 2-3] Staff also suggests the addition of a provision requiring that utilities prioritize implementation in a balanced manner. [Id.] GCI, on the other hand, would effectively abandon this reasoned approach. Instead GCI would require immediate compliance and, absent immediate compliance with every provision of the revised Part 280, would require a waiver proceeding before the Commission addressing each provision for which anything other than immediate compliance is to be achieved.

ComEd endorses and supports the reasonable balance struck by the Proposed Order. Staff's suggested 12 month outer bound "compromise" on achieving compliance is simply not feasible. However, ComEd does not oppose Staff's suggested additional provision requiring balanced prioritization. GCI's approach should not be adopted for the same reason it was not adopted by the ALJ – the record establishes that conforming utility systems to the new requirements will be expensive and time-consuming. GCI's efforts to overlay that process with a waiver proceeding before the Commission would only be counterproductive, consuming yet more resources that would better be devoted to achieving compliance quickly.

Section 280.30(c)(2) Third Party Applications

The Proposed Order approved compromise language offered by ComEd that addresses customers that have not contested billings within 6 months of service applications. [Proposed Order at 60] No representative of customer interests opposes this language. Staff, however, expresses reservations, Staff BOE at 6-7, based largely on an inapposite statutory provision concerning the timing of customer complaints [220 ILCS 5/9-252.1] but which does not in any way undermine the authority of the Commission to address this situation as the ALJ has done. Accordingly, the Commission should adopt the compromise approved by the ALJ.

Section 280.30(b) and (d) Application Information and Content

The Proposed Order carefully considers various proposals and adopts reasonable requirements regarding applications. GCI's exceptions, which reiterate positions that the ALJ declined to adopt, should not be adopted.

Section 280.30(e) and (i) Transfer of Service and Service Activation

Again the Proposed Order strikes a reasonable balance and should be affirmed. The exceptions of GCI, each of which were considered and reasonably rejected by the ALJ, should not be adopted.

Section 280.40 Deposits

The Proposed Order carefully considers the evidence and adopts language proposed by NICOR regarding commercial customers. In its BOE Staff articulates its reservations about this provision based on its limited familiarity with that type of customer but also submits definitional language to implement the provision. ComEd continues to support adoption of the NICOR proposal but does not oppose Staff's proposal that would clarify to which customers this provision applies.

GCI, on the other hand, continue to promote various revisions to the rules governing deposits that ComEd previously opposed and that the Proposed Order rejected. For the reasons articulated by the ALJ as well as those addressed in ComEd's initial brief to the ALJ in this matter [ComEd Brief at 12-13], ComEd urges the Commission to refrain from adopting these GCI-sponsored revisions.

Section 280.60(d)(3) and 280.80(i) Budget Billing Late Fees

Staff takes exception to the decision in the Proposed Order to allow assessment of a late fee on overdue budget payment amounts as proposed by IAWC. ComEd supports the holding of the ALJ in this regard.

Section 280.90 Estimated Bills

The Proposed Order approves Staff's language regarding meter reading and estimated bills. ComEd supports Staff's carefully crafted and balanced proposal and recommends that the Commission refrain from adopting GCI's exception that would entirely rewrite the provision to bar billing that is based on anything besides an actual meter read.

Section 280.120 Deferred payment Arrangements

The Proposed Order approves language that would make the deadline for DPAs the day before disconnection. Staff's observation that disconnections are frequently delayed does not warrant revising the rule, as requested in its exception [Staff BOE, pp 13-15], to extend the eligibility period for a DPA to include the day of disconnection.

Section 280.140 Disconnection for Lack of Access to Multi-Meter Premises

GCI takes exception to the provision that would authorize disconnection for failure to provide access to utility equipment. The rule that the Proposed Order approves is a reasonable and measured response to a real issue for utilities. It contains numerous safeguards. Moreover, as the Proposed Order notes, similar language has been included in Part 280 for many years without producing the consequences GCI envisions. ComEd urges the Commission to approve the provision recommended by the ALJ.

Section 280.160 Medical Certification

ComEd reluctantly supports the medical certification provision approved in the Proposed Order, though it includes provisions ComEd considers unwise and unnecessary. [See ComEd Brief at p. 28-29] GCI on exceptions asks the Commission to add language that would tilt the balance so far in favor of the nonpaying customer as to render the rule largely unworkable. ComEd opposes adoption of GCI's suggested changes.

Section 280.170 Timely Reconnection of Service

GCI takes exception to the timelines proposed by Staff and adopted by the ALJ in the Proposed Order for reconnection of service. As the ALJ found, the two day reconnections favored by GCI simply are not feasible. Accordingly, the Commission should not adopt GCI's recommended timelines.

Section 280.270 Annual Reporting

GCI urges that the Commission incorporate into Part 280 a provision that specifies detailed metrics to be compiled by the utilities and reported to the Commission. No such provision was included in the rule supported by Staff; nor was such a provision adopted by the ALJ in the Proposed Order. ComEd opposes the addition of the section recommended by GCI because the costs imposed on all customers of compliance with the section would exceed the benefits.

Respectfully submitted,

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